

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

SHIRLEY ANN CHAMBERS,)	
Administratrix of the Estate)	
of Timothy Malcolm Lam,)	Civil Action No. 7:02CV00564
Deceased,)	
)	
Plaintiff,)	
)	<u>Memorandum Opinion</u>
v.)	
)	
CITY OF ROANOKE, VIRGINIA)	
<u>et al.</u>,)	By: Samuel G. Wilson
)	Chief United States District Judge
Defendants.)	

This is an action for damages pursuant to 42 U.S.C. § 1983 by plaintiff, Shirley Ann Chambers, Administratrix of the Estate of Timothy Malcolm Lam (“the estate”), against a former Roanoke City police officer, Artiers Sanchez, alleging that Sanchez arrested Lam without probable cause and with unreasonable and excessive force in violation of Fourth and Fourteenth Amendments and against defendants, the City of Roanoke (“the City”) and its Chief of Police, A. L. Gaskins, alleging that the allegedly unlawful arrest was pursuant to an official policy or custom. The estate filed suit in state court, and defendants removed it to this court pursuant to 28 U.S.C. § 1441. Despite the pendency of this case since March 2002, the estate has not served Sanchez with process. This matter is before the court on a motion for summary judgment by the City and Gaskins. The court finds that the estate is unable to marshal evidence creating a genuine issue of triable fact that Sanchez lacked probable cause and used excessive force or arrested Lam pursuant to an official policy or custom for which the City or Gaskins would be liable. Accordingly, the court grants their motion for summary judgment. In addition, the court dismisses without

prejudice the case against Sanchez because the estate has not served him in a timely manner.

I.

On March 23, 2000, upon seeing an approaching police vehicle, Timothy Lam lost control of the automobile he was driving, ran off the road and hit a parked car. Police officers witnessed the accident and arrested Lam as he attempted to leave the scene on foot. Lam suffered a twisted and broken ankle during the incident and later pled guilty to charges of driving under the influence and obstruction of justice.

Lam filed suit in state court alleging that by failing to form a citizens' oversight committee and by failing to reprimand or properly supervise officers, the City and Gaskins tolerated and encouraged the use of excessive force in violation of the Fourth and Fourteenth Amendments. The City and Gaskins removed the case to this court and have now moved for summary judgment on the grounds that the estate lacks any proof establishing an unconstitutional act on the part of Sanchez or an unconstitutional policy or custom on the part of the City or Gaskins. Gaskins also asserts the defense of qualified immunity. After the action was removed, Lam died of unrelated causes, and the administratrix of his estate was substituted as plaintiff.

II.

On motion for summary judgment, the court must view the facts, and the inferences to be drawn from those facts, in the light most favorable to the party opposing the motion. Ross v. Communications Satellite Corp., 759 F.2d 355 (4th Cir. 1985). Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); See, e.g., Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). The adverse party cannot rest on mere assertions or conclusory allegations,

but rather, Rule 56 mandates the entry of summary judgment against a party who fails to produce significantly probative evidence that establishes the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. Matsushita Elec. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, (1986); Celotex, 477 U.S. at 322; Abcor Corp. v. AM International, Inc., 916 F.2d 924, 929 (4th Cir. 1990). Defendants move for summary judgment on the grounds that the estate has failed to marshal evidence that Sanchez lacked probable cause or used excessive force in arresting Lam and that even if the estate could hurdle that obstacle there is no basis to hold either the City or Gaskins liable. For the following reasons, the court agrees.

A.

A plaintiff cannot pursue a § 1983 claim premised on allegedly unconstitutional acts that would disturb a valid, legally viable conviction. Heck v. Humphrey, 512 U.S. 477, 486-87, 490 n. 10 (1994); Gibbs v. South Carolina Dep't of Probation, No. 97-7741, 1999 U.S. App. LEXIS 340 at *6-*8 (4th Cir. 1999). Following his arrest, Lam pleaded guilty to driving under the influence and obstruction of justice. The estate, nevertheless, maintains that Sanchez lacked probable cause, and the estate is pursuing a false arrest claim premised on the alleged violation of Lam's Fourth Amendment rights. However, a determination that Sanchez lacked probable cause, a predicate to the estate's false arrest claim, would necessarily imply that Lam's convictions were invalid. Therefore, Heck bars that claim.

Even if Lam's convictions were invalidated, the estate is unable to marshal any evidence to support a false arrest claim. A false arrest claim under § 1983 requires the plaintiff to show that the arresting officer lacked probable cause. Albright v. Oliver, 510 U.S. 266 (1994). Probable

cause is determined by the totality of the circumstances at the time of the arrest. Illinois v. Gates, 462 U.S. 213 (1983). The undisputed facts unequivocally demonstrate that the officers in this case had probable cause to arrest Lam. First, Lam's pleas of guilty to the underlying offenses constitute admissions that he in fact committed, and is culpable for, these offenses. Second, the estate admits in its pleadings that Lam hit a parked car, ran off of the road, and left the scene of the accident, all within the presence of the arresting officers. Under Virginia law, a police officer is entitled to make an arrest without a warrant for a crime committed in his or her presence. Va. Code. Ann. § 19.2-81. Therefore, the claim has no merit, and the court will grant summary judgment.

B.

The estate also asserts that Sanchez used excessive force in violation of the Fourth and Fourteenth Amendments. Graham v. Connor, 490 U.S. 386, 396-97 (1989). A police officer's use of force is not excessive where a reasonable officer under the same circumstances would have probable cause to believe that the suspect posed a threat of serious physical harm to the officer or others. Vathekan v. Prince George's County, 154 F.3d 173, 179 (4th Cir. 1998); McLenagan v. Karnes, 27 F.3d 1002, 1006-07 (4th Cir. 1994). In ascertaining the reasonableness of an officer's actions, the court must consider such factors as "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." Graham, 490 U.S. at 396.

Here, the estate has no evidence that explains the details surrounding Lam's arrest. The estate relies merely on assertions and allegations. Before his death, Lam made no admissible statements regarding the circumstances of his arrest. The estate has not presented any affidavit

from any witness to the arrest, and the only witness affidavit offered by the estate is that of Mr. J. C. Flint, Jr., a passenger in the vehicle that Lam was driving. However, Lam fled the scene, and Flint remained in the car and never saw what happened. As the estate has conceded, “there was nobody that actually saw exactly what happened at that time . . . nobody watching, and nobody there at the scene to see exactly what took place . . .no witnesses as to what actually took place” (Summ. J. Tr. at 6, 9-11). The estate’s only evidence is that Lam’s ankle was twisted. (Summ. J. Tr. at 8-10, 12). However, the ankle injury is not probative on the question of whether Sanchez used reasonable force under the circumstances, such as whether force was necessary in order to apprehend Lam, whether the amount of force used corresponded to that need, or whether the officer reasonably perceived a threat of harm. Accordingly, the court finds that the estate cannot satisfy its burden of proof and will enter summary judgment for Gaskins and the City on that claim.

C.

Even if the estate were able to prove that Sanchez lacked probable cause or used excessive force, its claim against Gaskins and the City still fails because there is no respondeat superior liability under § 1983. See Slakan v. Porter, 737 F.2d 368, 372 (4th Cir. 1984). The estate, therefore, must prove that Gaskins and the City are liable because of their own actions or inactions. Moreover, Gaskins is entitled to the defense of qualified immunity.

With respect to the City, a municipality may only be held liable for the existence of an official policy or custom fairly attributable to the municipality that proximately caused the deprivation of plaintiff’s constitutional rights. Jordan v. Jackson, 15 F.3d 333, 338 (4th Cir. 1994). The estate, however, makes only general allegations that training in the police department

is inadequate, that citizens have submitted complaints against members of the police department, and that the police department has a permissive attitude towards violations of constitutional rights. Simply put, the estate has offered nothing but general boilerplate allegations that lack meaningful specificity and content. It follows, that the estate has failed to forecast evidence sufficient to prove an unconstitutional policy or custom for which the City possibly could be held liable.

Similarly, Gaskins may be held liable only if the estate demonstrates that he was indifferent to his supervisory responsibilities or that he expressly or tacitly authorized Sanchez's alleged misconduct. Miltier v. Burton, 896 F.2d 848, 854 (4th Cir. 1990); Slakan, 737 F.2d at 372. Gaskins must have personally acted to violate Lam's constitutional rights or should have anticipated that Sanchez would violate them. See Vinnedge v. Gibbs, 550 F.2d 926 (4th Cir. 1977); Slakan, 737 F.2d at 373. On that score, the evidence is wholly insufficient to create a triable issue of fact.

Moreover, qualified immunity protects Gaskins from individual liability as well. Qualified immunity shields government officials performing discretionary functions "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 815 (1982). In determining whether a government official is entitled to qualified immunity, the court must, in the following order, "(1) identify the right allegedly violated, (2) determine whether the constitutional right violated was clearly established at the time of the incident, and (3) evaluate whether a reasonable official would have understood that the conduct at issue violated the clearly established right." Henderson v. Simms, 233 F.3d 267, 271 (4th Cir. 2000)

(quotations omitted). The right to be free from unconstitutional arrest is axiomatic, but the estate has marshaled nothing to demonstrate that the right was violated. But even if the estate could prove that Sanchez violated Lam's clearly established constitutional rights, nothing suggests that Gaskins had "fair warning" of the likelihood that Sanchez might violate those rights. See Hope v. Pelzer, ___ U.S. at ___, 122 S. Ct. 2508, 2516 (2002). Thus, Gaskins is entitled to qualified immunity.

III.

Since the estate has failed to adduce any evidence in support of its claims, the court finds no material issue of fact for trial and will enter summary judgment for the City and Gaskins. In addition, because the estate has failed to pursue the action against Sanchez and serve him with process, the court will dismiss the suit against him without prejudice.

ENTER this 13th day of January, 2003.

CHIEF UNITED STATES DISTRICT JUDGE

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**SHIRLEY ANN CHAMBERS,
Administratrix of the Estate
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Plaintiff,

v.

**CITY OF ROANOKE, VIRGINIA
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Defendants.

Civil Action No. 7:02CV0056

FINAL ORDER

**By: Samuel G. Wilson
Chief United States District Judge**

In accordance with the accompanying memorandum opinion entered on this date, it is
ORDERED and **ADJUDGED** as follows:

1) Summary judgment is **ENTERED** in favor of defendants City of Roanoke and Chief A.

L. Gaskins; and

2) Defendant Artiers Sanchez is **DISMISSED** from this suit without prejudice.

This case is stricken from the active docket of this court.

ENTER this 13th day of January, 2003.

CHIEF UNITED STATES DISTRICT JUDGE